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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,774	06/26/2001	James E. Black JR.	70255	2703
22242	7590	06/29/2005	EXAMINER	
FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			RODRIGUEZ, PAMELA	
			ART UNIT	PAPER NUMBER
			3683	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/891,774

Applicant(s)

BLACK ET AL.

Examiner

Pam Rodriguez

Art Unit

3683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 feb 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 45-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's Information Disclosure Statement filed on February 25, 2005 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 45-64 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the last paragraph of Claim 45, the phrase "the panel" is indefinite. It is unclear which of the plurality of side panels referred to that applicant is specifically pointing out here. The examiner concludes that this phrase should read —each panel— and the claim has been treated as such.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 45-60, 63, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,762,001 to Dworakowski in view of U.S. Patent No. 4,751,883 to Bealer.

Regarding Claim 45, Dworakowski discloses an articulated railway car (see Figure 1) capable of transporting automobiles in commercial rail service having most all the features of the instant invention including: the car comprising at least two units 19-21, each unit comprising a floor, a roof, a pair of upstanding side walls (see Figure 1 and walls forming side panels 18), a pair of end doors (inherently present), and at least

one upper deck 21 spaced above the floor of the car so that automobiles may be supported on at least two levels, each of the upstanding side walls comprising a plurality of vertical posts 16 supporting the upper deck 21 and roof (see Figure 1), a plurality of side walls panels 18 connected to vertical posts 16, the side wall panels 18 functioning as shear plates to tie the vertical posts together and to bear substantial loads in the plane of the side wall (see Figure 1), each of the side wall panels 18 extending substantially the entire height of the side wall (see Figure 1), and some of the side wall panels 18 having a plurality of separate groups of perforations for ventilation and lighting formed therein (see column 3 lines 53-57), with other portions of the side wall panels 18 being imperforate to reduce admission of airborne particles (inherently at least some portions of the panels would not be perforated as alluded to in column 3 lines 53-57, which states that "many", i.e., not all, portions of the side panels have perforations therein), and wherein groups of perforations would be spaced inward from the edges of each panel and being spaced vertically from one another in each panel (again as alluded to from column 3 lines 53-57, where since the majority of the panel is perforated, at least some perforations would be located inwards from edges of the panel and spaced vertically from one another in some planar relationship).

However, Dworakowski does not disclose that the groups of perforations include a horizontal series of groups along the bottom of at least one level to provide lighting and ventilation for workers adjusting wheel chocks at the floor of the level.

Bealer is relied upon merely for his teachings of multi-level railway car (see Figures 1 and 2) having groups of perforations include a horizontal series of groups

along the bottom of at least one level capable of providing lighting and ventilation for workers (see Figure 3 and column 3 lines 39-41, wherein perforated grating 25 would provide necessary lighting and ventilation to a worker working underneath the level).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the groups of perforations of Dworakowski to include a horizontal series of groups along the bottom of at least one level to provide lighting and ventilation for workers as suggested by Bealer in order to provide an easier means to perform any maintenance necessary under the transported automobile, such as adjusting the wheel chocks for the vehicles.

Regarding Claims 46 and 50, Dworakowski, as modified, does not disclose that each of the groups has a vertical dimension of between 6 inches and 24 inches.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed each of the groups of Dworakowski, as modified, to have a vertical dimension between 6 and 24 inches as a matter of design preference dependent upon the desired level of ventilation for the railway car carrying the automobile. The smaller the spacing between groups, the greater the amount of ventilation provided.

Regarding Claims 47 and 51, Dworakowski, as modified, does not disclose that each of the perforations has a diameter of $\frac{5}{8}$ of an inch to 1 inch.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed each of the perforations of Dworakowski, as modified, to have diameters of $\frac{5}{8}$ – 1 inch as a matter of design preference, again

dependent upon the desired level of ventilation for the railway car. The larger the perforation, the greater the amount of ventilation provided.

Regarding Claim 48, Dworakowski, as modified, does not disclose that each of the groups of perforations is substantially rectangular in shape.

Here, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed each of the groups of perforations of Dworakowski, as modified, to be substantially rectangular as a matter of design preference, dependent upon the desired air flow for the railway car. By constructing the groups of perforations to be of a rectangular configuration, a more concentrated and uniform air flow can be generated throughout the railway car.

Regarding Claim 49, see Figure 1.

Regarding Claims 52 and 53, Dworakowski, as modified, does not disclose that the groups of perforations are arranged in horizontal series, with no more than four horizontal series.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the groups of perforations of Dworakowski, as modified, to be arranged in horizontal series, with no more than four horizontal series, again as a matter of design preference, dependent upon the desired ventilation for the railway car. As long as the railway car is properly ventilated, the arrangement of the groups of perforations is arbitrary.

Regarding Claim 54, Dworakowski, as modified, does not disclose that each group of perforations is spaced inward from at least one panel by a margin of about six inches.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the groups of perforations of Dworakowski, as modified, to be spaced inward from a panel by about six inches as a matter of design preference, in order to maintain a greater strength at the points where the side wall panels attach to the vertical posts. By spacing the groups slightly away from the attachment point of the side wall panels to the vertical posts, a stronger connection between the two components can be maintained as no material at this connection point has been removed.

Regarding Claim 55, see door edge protection member 26 and column 5 lines 20-26 of Dworakowski.

Regarding Claim 56, see bumper panels 24 of Dworakowski, wherein, due to their location shown in Figure 1, at least some of the bumper portions would be disposed between groups of perforations adjacent imperforate portions of the sidewall.

Regarding Claim 57, inherently the railway car of Dworakowski would comprise an end door having all the features of the claim.

Regarding Claim 58, Dworakowski's top portions of his end doors would inherently extend approximately from the centerline of the car to the side wall of the car as this configuration would be the only means of effectively closing up the ends of the railway cars.

Regarding Claim 59, inherently this limitation would be true as the top portion of the end door would be solid in order to prevent persons from gaining access to the interior of the car.

Regarding Claim 60, Dworakowski, as modified, do not specifically disclose that the top portion is substantially impermeable to air.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the top portion of the end doors of Dworakowski, as modified, to be impermeable to air in order to completely encase and encapsulate the automobiles within the railway car and to prevent any damage to the automobiles housed within the railway cars.

Regarding Claim 63, see at least bumper panels 24 which have multiple holes therein for attachment of fasteners to affix the bumpers to the side walls of the railway car (note in particular column 7 lines 23-25, which states that the bumpers can be constructed of any deformable and resilient material, i.e., such as plastic).

Regarding Claim 64, the end doors of the racks of Dworakowski are readable as the flexible enclosure claimed, wherein the gap between the units is readable as the gaps between each of the roofs of the units and the flexible enclosure is readable as one of the end doors of the units.

However, Dworakowski, as modified, does not disclose that the roof and side wall member is pleated.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the flexible enclosure of Dworakowski, as

modified, to be of a pleated configuration as a matter of design preference dependent upon the desired strength and rigidity of the flexible enclosure and configuration of the railway car units.

7. Claims 61 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent no. 5,762,001 to Dworakowski in view of U.S. Patent No. 4,751,883 to Bealer as applied to claims 45-60, 63, and 64 above, and further in view of U.S. Patent No. 4,917,021 to Murphy.

Regarding Claim 61, Dworakowski, as modified, does not disclose a pair of flexible closure members as claimed.

Murphy is relied upon merely for this teachings of a pair of flexible closure members 94 have a first portion attached to an end door and a second portion attached to one of the side walls (see Figures 11 and 17), which would, at least to some extent, restrict airflow into the car about the outer edges of the end doors, and wherein the first portion of the flexible closure members is attached to the outer edge of its associated end door (see Figures 11 and 17).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the railway car of Dworakowski, as modified, to include a pair of flexible closure members as taught by Murphy in order to better seal the end doors to more effectively provide a more secure and sheltered environment for the automobiles in which the railway cars house.


Regarding Claim 62, see at least track 90 of Murphy which forms a flexible inner edge seal which would restrict airflow between the end doors when they are closed.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pam Rodriguez whose telephone number is 571-272-7122. The examiner can normally be reached on Mondays 5 am -3:30 pm and Tuesdays 5 am -11 am.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Bucci can be reached on 571-272-7099. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Pam Rodriguez
Primary Examiner
Art Unit 3683
6/12/05

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06/12/05